

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4963 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

JAYANTILAL MAKWANA TRANSPORT MANAGER

Versus

AHMEDABAD MUNICIPAL CORPO.

Appearance:

1. Special Civil Application No. 4963 of 2002
MR MUKUL SINHA for Petitioner No. 1
MR S.N.SHELAT, SR. COUNSEL with MR MG NAGARKAR
for Respondent No. 1
MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 2
MR MAYUR PANDYA, SR. COUNSEL for Respondent No. 3
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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 20/10/2004

ORAL JUDGEMENT

In this petition, the petitioner has prayed that the order dated 27.4.2002, appointing respondent No.3 to the post of Deputy Municipal Corporation, be declared illegal, discriminatory, arbitrary and in violation of Article 14 of the Constitution of India. The petitioner has therefore, prayed for quashing of the said order dated 27.4.2002. The petitioner has also prayed for a direction to the respondent No.1 for considering his case for appointment to the post of Deputy Municipal Commissioner with effect from 27.4.2002 and for grant of all consequential benefits.

2. The factual background as emerging from the pleadings on record leading to the present petition can be noted at this stage.

2.1 In the petition, the petitioner has stated and about which there is no serious dispute that he was appointed as Salvage Attendant in the respondent No.1 Ahmedabad Municipal Corporation (hereinafter referred to as "the respondent No.1 Corporation" for short) on 1.6.1977. The petitioner was thereafter posted as Transport Inspector, which also like the post of Salvage Attendant, was a Class-III post; on 14.8.1980. The petitioner was thereafter promoted to the Class-II post of Ward Officer and later on as Solid Waste Superintendent from 1.12.1981 to 15.1.1990. The petitioner was thereafter, promoted to the post of Deputy Octroi Superintendent, a Class-I cadre on 16.1.1990 and had worked on various posts in Class-I Cadre upto 29.12.2000. The petitioner had held the post of Director, Solid Waste Management in the pay-scale of Rs. 12,000 16,500. The petitioner was thereafter appointed to the post of Director, Solid Waste Management and Conservancy Services in the pay-scale of Rs. 14,300 18,300 with effect from 30.12.2000, which is the post of Head of Department. It is further stated that with effect from 11.10.2001, the petitioner has been posted as Transport Manager of the Ahmedabad Municipal Transport Services, in the pay-scale of Rs. 14,300 - 20,050.

2.2 Regarding the educational qualifications of the petitioner also there is no dispute between the parties. The petitioner holds the degree of Bachelor of Arts and Bachelor of Law.

2.3 There is also no dispute about the fact that the petitioner did not have Second Class in the Degree of Bachelor of Arts, nor did he get Second Class while passing the LL.B (General) examination. It is also not in dispute that however, the petitioner passed LL.B

(Special) Examination in which he secured Second Class.

2.4 Regarding respondent No.3, whose appointment to the post of Deputy Municipal Commissioner is under challenge, the petitioner has contended that the respondent No.3 had joined the respondent No.1 Corporation as Slaughter House Superintendent in the Health Department with effect from 11.5.1989. The said post is in the pay-scale of Rs. 8,000 - 13,500. It is stated that after having worked on the said post till 30.12.2000, the respondent No.3 was promoted to the post of Assistant Municipal Commissioner, Class-I post, in the pay-scale of Rs. 12,000 - 16,500.

2.5 Regarding the educational qualifications and experience of the respondent No.3 the petitioner has stated that the respondent No.3 holds the degree of Bachelor of Veterinary Science and Animal Husbandry. It is also stated that the respondent No.3 does not possess the requisite experience and qualifications prescribed under the Rules for holding the post of Deputy Municipal Commissioner.

2.6 It is also the case of the petitioner that the respondent No.3 was promoted to the post of Deputy Municipal Commissioner with effect from 27.4.2002 in the pay-scale of Rs. 14,300 - 20,050, overlooking the claim of the petitioner who is senior to the respondent No.3 in Class-I cadre. The petitioner has stated that the respondent No.3 did not even possess the requisite experience required for the post in question.

3. The petitioner has challenged the appointment of the respondent No.3 to the post of Deputy Municipal Commissioner, on various grounds including the ground that the procedure followed by the respondent No.1 before appointing the respondent No.3 to the said post was illegal and not in conformity with the provisions of the Bombay Provincial Municipal Corporation Act (hereinafter referred to as "the said Act"). The petitioner, as noted above, has also questioned the eligibility of the respondent No.3 for being considered for appointment to the said post.

4. The respondent No.1 in its affidavit-in-reply dated 11.7.2002 has stated inter-alia that the Recruitment Rules for the post of Deputy Municipal Commissioner require a Second Class Degree in Arts, Science, Commerce or Law and a minimum of 10 years administrative experience. It is stated that Foreign Degree or Post Graduation is considered as an additional

qualification.

4.1 It is stated that the appointment to the post of Deputy Municipal Commissioner is to be made under Section 45 of the said Act and the same is governed by the Rules in Chapter 3 to Appendix 4 of the said Act. It is further stated that under Rule 2 of Chapter 3 of Appendix 4 of the said Act, before making appointment to a post, applications are to be invited by advertisement in local Newspapers and such applications are to be scrutinised by the Commissioner who is required to submit to the Corporation a list arranged in order of preference of such persons out of those who have applied as he considers qualified for the post in question. It is further stated that the proviso to Rule 2 enables the Corporation to make appointment to the post, if the Corporation is of the opinion that any officer in Municipal service possessing the qualification prescribed under Rule 3 is a fit person to be appointed to the post without following the procedure prescribed in the said Rule.

4.2 It is stated that by Resolution dated 22.1.1999, the Corporation has appointed a Special Committee under Section 30 of the said Act, known as "Staff Selection and Appointment Committee" consisting of the following Members:-

1. Mayor
2. Deputy Mayor
3. Chairman, Standing Committee
4. Leader of Municipal, Bharatiya Janta Party
5. Leader of Municipal, Congress Party.

It is also stated that finality is attached to the appointment made by the said Committee if it is backed by minimum half of the Members of the Committee.

4.3 It is further stated that Departmental Promotion Committee ("DPC" for short) consists of Municipal Commissioner and two Deputy Municipal Commissioners.

4.4 It is further stated that consequent upon Shri Dixit who was holding the post of Deputy Municipal Commissioner seeking retirement with effect from 27.4.2002, a meeting of the DPC was convened on 27.4.2002 and the Committee considered the following three officers for making recommendation under the proviso to Rule 2 to Chapter 3:-

1. Shri P.K. Makwana

2. Shri Jayantilal S. Makwana
3. Capt. Dilipkumar J. Mahajan

4.5 It is stated that Shri P.K. Makwana was not found suitable for the post in question. It is stated that the representation of the petitioner was also considered by the Committee, but the Committee was of the opinion that the petitioner did not possess the eligibility qualification for consideration for the post of Deputy Municipal Commissioner. It is stated that according to the Rules, for the appointment to the post in question, a minimum Second Class Degree in Arts, Science, Commerce or Law is required and the Committee was of the opinion that the petitioner did not have the basic degree in Arts in Second Class, nor did the petitioner have the Degree in law in Second Class. It is stated that the petitioner passed LL.B Examination in compartments and though the petitioner subsequently had passed the LL.B (Special) Examination in Second Class, the Committee was of the opinion that what was required under the Rules was a Second Class Degree in Arts, Science, Commerce or Law and the petitioner acquiring a Second Class degree in Special law would not make him eligible for consideration. It is stated that the degree in Special law is required for joining the professional course. Basic degree in law does not entitle a person for being admitted as an Advocate to practice law unless he completes the Third Year of LL.B Examination. It is further stated that the students desiring to undertake Post Graduate study in law need not have a degree in special law and the Degree of Bachelor of law (General) would be sufficient. It is further stated that for the purpose of employment, what was required was a Degree of Bachelor of Law and passing of the Special Law Degree was not requisite qualification. It is therefore suggested that passing of the Special Law in Second Class would not substitute for passing of LL.B Examination in Second Class, which admittedly the petitioner had not done. The Committee therefore, found the petitioner ineligible for being considered for appointment to the post in question. It is stated that on the other hand the respondent No.3 was found fit by the Committee to carry out the responsibilities.

4.6 It is stated that the recommendations of the Committee were placed before the Special Committee (i.e. Staff Selection and Appointment Committee) consisting of five members and the said Committee, in its meeting held on 29th April, 2004, unanimously accepted the recommendation of the Departmental Promotion Committee. The Staff Selection and Appointment Committee was

apprised of the representation of the petitioner and his claim that he was eligible for consideration, however, the Committee resolved to offer appointment to the respondent No.3 to the post of Deputy Municipal Commissioner.

4.7 With respect to the qualifications of respondent No.3, it is stated that he was commissioned in Indian Army as a Second Lieutenant and thereafter, appointed as a Captain. He is a Graduate from Bombay Veterinary College and possesses a Degree of Bachelor of Veterinary Science. He has attended the management course at Indian Institute of Management at Ahmedabad in the year 1988-89 and has passed a Local Self-Government Diploma in the year 1994 and he is working with the Corporation since October, 1989. He is found to be an outstanding officer, who has proved his worth in his career with the Corporation. He has assisted the Corporation in all important and emergency matters and has more than 10 years of administrative experience.

5. The averments made by the petitioner in his affidavit-in-rejoinder and those made by the respondent No.1 in the affidavit-in-sur-rejoinder need not be recorded in detail at this stage and reference would be made to such of the averments as would be necessary in the later part of this judgement.

6. One may however, note that by an affidavit dated 23rd October, 2002, one Shri Bhanubhai P. Chauhan, Secretary to the Special Committee of the respondent No.1 Corporation has stated that he is the Secretary to the Municipal Corporation and is therefore, convening the meetings of the Staff Selection and Appointment Committee. He has stated that the Committee had unanimously accepted the recommendation for appointment of the respondent No.3 to the post of Deputy Municipal Commissioner. He has further stated that the members of the Committee also had discussion with respect to eligibility of the petitioner for being appointed to the post of Deputy Municipal Commissioner.

7. On the basis of these factual averments, the petitioner has contended that the appointment of the respondent No.3 to the post of Deputy Municipal Commissioner was illegal and unlawful. Learned Counsel Shri Mukul Sinha appearing for the petitioner has submitted that Staff Selection and Appointment Committee did not have the power to consider the question of appointment to the post of Deputy Municipal Commissioner. He submits that the Committee that could have validly

examined the said question was one envisaged under Section 54 of the said Act.

7.1 The Counsel has further submitted that the so-called Departmental Promotion Committee also did not have the authority to examine the eligibility of the officers in question and to make recommendations with respect to the fitness of such officers for being appointed to the post in question. He submits that the said Act or the Rules framed thereunder do not envisage creation of any such Committee.

7.2 With respect to the qualifications of the petitioner, the Counsel submits that there is no dispute about the fact that the petitioner did pass LL.B (Special) with a Second Class. He submits that there is no distinction under the Rules that the Degree in Law would mean only the Degree of LL.B (General) and would not include the Degree of LL.B (Special). He therefore submits that the fact that the petitioner did not have LL.B Second Class in General would not render him ineligible for being considered for appointment to the post in question, since admittedly the petitioner did possess the Degree of LL.B (Special) with Second Class.

7.3 With respect to the qualifications of the respondent No.3, it is suggested that the respondent No.3 did not have a Degree in Science as required under the Rule and a Graduate Degree in Veterinary Science and Animal Husbandry cannot be equated with the requisite qualification of Degree in Science. In support of this contention, the learned Counsel has placed reliance on the decision of a learned Single Judge of this High Court dated 29.11.1983, rendered in Special Civil Application No. 3328 of 1983, where the Court has come to the conclusion that the requirement that a candidate must have a Second Class Degree in Arts, Law, Science or Commerce from a recognized University would not stand fulfilled if the candidate had passed M.B.B.S Examination and therefore had a Degree in Medicine and Surgery. The Court concluded that the Degree in medicine cannot be equated with the Degree in science.

7.4 The Counsel for the petitioner has also submitted that the respondent No.3 did not have ten years of Administrative experience as required under the Rules. It is suggested that the respondent No.3 had less than 8 years of Administrative experience and his earlier experience as a Superintendent of the Slaughter House cannot be considered as Administrative experience. He has also submitted that the respondent No.3 was holding

the Class-I post only for about 2 years before his consideration for the post of Deputy Municipal Commissioner and therefore, any experience prior to the said period cannot be taken into account for examining his eligibility.

7.5 The Counsel for the petitioner has also urged that the action of the respondent No.1 in declaring the petitioner as ineligible and considering the respondent No.3 to the post in question when he was not so eligible suggests that the action of the respondent No.1 was actuated by malafides and the selection of the respondent No.3 was pre-decided and pre-judged.

8. Appearing for the respondent No.1, Shri. S.N. Shelat, learned Senior Counsel has contended that the respondent No.1 has followed the requirements under the Act and after following the detailed procedure in conformity with the Act and the Rules, made appointment of respondent No.3 to the said post. He has contended that the Staff Selection and Appointment Committee is created by the Corporation in exercise of powers under Section 30 of the said Act and such a Committee enjoys the power of making appointments, if the decision of the Committee is taken by the majority of the members. He has submitted that the Committee had taken into consideration the recommendations of the Departmental Promotion Committee and had concurred with the recommendations. He has submitted that the Departmental Promotion Committee as well as the Staff Selection and Appointment Committee found that the petitioner was not possessing educational qualifications required for the post in question. He has submitted that the fact that the petitioner possesses the Degree of LL.B (Special) with Second Class would not fulfil the requisite educational qualifications since what was required was a Second Class Degree in Law and the said requirement can be said to be fulfilled only if the candidate possessed a Degree in Law (General) with Second Class. He has submitted that LL.B (General) Degree is what is needed for pursuing Post Graduate studies in Law as well as for appointments to the different public services. He therefore submitted that the decision of the Staff Selection and Appointment Committee, which upon consideration found the petitioner ineligible for the post in question, is just and proper.

8.1 With respect to the qualifications of the respondent 3, Shri S.N. Shelat, Senior Counsel submitted that the Committee had considered the eligibility of the respondent No.3. It was found that he did possess the

Degree in Science and the fact that such a Degree is in the Science of Veterinary and Animal Husbandry would not render the qualification of the respondent No.3 insufficient, so far as the post in question is concerned. It is urged that the Degree in Science as required under the Rules in question would include Degree in all kinds of Science and it is not possible to exclude the Degree in Veterinary and Animal Husbandry from the purview of the requisite qualifications.

8.2 With respect to the administrative experience also, it is stated that the respondent No.3 was found to be possessing the experience required and that he had more than 10 years of administrative experience and was therefore, eligible for being considered for the post in question.

8.3 The learned Senior Counsel for the respondent No.1 has submitted that the decision of the Staff Selection and Appointment Committee, after following the procedure required under the law, would not be open to judicial review unless it is found that the decision was arbitrary or capricious.

8.4 With respect to the allegations of malafides, it is submitted that the contentions are not born out from the material on record.

9. Learned Senior Counsel Shri Mayur Pandya, appearing for the respondent No.3 has adopted the arguments of the learned Senior Counsel for the respondent No.1 and has further contended that the petitioner was correctly kept out of the consideration, since he did not fulfil the necessary qualifications required under the Rules. He has submitted that the petitioner has failed to demonstrate that the respondent No.3 did not possess requisite educational qualification or experience.

10. Learned Assistant Government Pleader Mr. N.D. Gohil for the respondent No.2 supported the arguments advanced by the learned Senior Counsel for the respondents No.1.

11. In the light of the material on record and the submissions made before the Court, following three main questions are required to be examined and answered:-

(A) Whether the respondent No.1 followed the procedure as laid down under the law before making the appointment of respondent No.3?

(B) Whether the petitioner possessed the requisite qualifications for the appointment to the post of Deputy Municipal Commissioner?

(C) Whether the respondent No.3 fulfilled the necessary qualifications for being appointed to the post in question?

12. With respect to the first question, this Court may examine the question of formation of the Staff Selection and Appointment Committee. Section 30 of the said Act pertains to the Special Committees of the Corporation. Sub-section (1) of Section 30 provides that the Corporation may, from time to time, appoint Special Committees, which shall conform to any instructions that the Corporation may give them. Sub-section (2) of Section 30 provides that the Corporation may define the sphere of business of each Special Committee by specific Resolution passed by not less than 2/3rd of the Councillors present and voting and also permits the Corporation by like Resolution to delegate any of its powers and duties to specified Special Committees. Sub-section (2) of Section 30 reads as follows:-

"30. Special Committees of the Corporation

(1) xxx xxx

(2) The Corporation may by specific

resolution passed by the vote of not less than two-thirds of the councillors present and voting at a meeting of the Corporation define the sphere of business of each Special Committee and direct that all matters and questions included in any such sphere shall in the first instance be placed before the appropriate Committee and shall be submitted to the Corporation with such Committee's recommendation; and the Corporation may also by a like resolution delegate any of its powers and duties to specified Special Committees."

12.1 Sub-section (6) of Section 30 of the said Act provides that all the proceedings of every Special Committee shall be subject to confirmation by the Corporation. By proviso to said sub-section (6) of Section 30, it is however, provided that if while delegating any of its powers or duties to Special Committee under sub-section (2) of Section 30, the

Corporation directs that the decision of such Committee shall be final, then so much of the proceedings of such Committee shall not be subject to confirmation by the Corporation, if such decision is supported by at least half the total number of members of such Committee. Sub-section (6) of Section 30 reads as follows:-

"Sec. 30 - Special Committees of the Corporation.

(1) xxx

(2) xxx

(3) xxx

(4) xxx

(5) xxx

(6) All the proceedings of every Special Committee shall be subject to confirmation by the Corporation.

Provided that if, in delegating any of its powers or duties to a Special Committee under sub-section (2), the Corporation directs that the decision of such Committee shall be final, then so much of the proceedings of such Committee as relates to such powers or duties shall not be subject to confirmation by the Corporation, if such decision is supported by at least half the total number of members of such Committee.

Provided further that any Special Committee may by a resolution supported by at least half the whole number of members direct that action be taken in accordance with the decision of such Committee without waiting for confirmation of its proceedings by the Corporation, where such confirmation is required, if such Committee considers that serious inconvenience would result from delay in taking such action' but if the Corporation does not subsequently confirm the proceedings of such Committee, such steps as may still be practicable shall be taken without delay to carry out the orders of the Corporation."

12.2 It can thus be seen that it is within the power of the Corporation by passing necessary resolution in this regard to constitute Special Committees and to delegate any of its powers and duties to such Committees. It may also be noted that though generally proceedings of such Committees are subject to the confirmation by the Corporation, however if the Resolution by which such delegation of powers and duties are vested in the Committees directs that the decision of the Committee

shall be final, to that extent the proceedings of the Committee would not be subject to the confirmation of the Corporation, if the decision is taken by at least half the total number of members of the Committee.

12.3 It is stated by the respondent No.1 in its affidavit-in-reply and pointed out by the learned Senior Counsel Shri Shelat in his submissions that in exercise of powers under Section 30 of the said Act, by a Resolution dated 22.1.1999, the Corporation has constituted the Committee called "Staff Selection and Appointment Committee". The said Resolution also specifies the sphere of business that may be transacted by such Committee. It includes besides others powers for appointment to such of the posts as the Corporation would have the powers to appoint under Section 4(2), 40, 45, 51, 58 and Schedule Chapter 3 to Rule 2. The Resolution also states that the said powers are delegated in the said Committee in exercise of powers under Section 30(2) of the said Act and it is further directed that the decision of the Committee will be treated as final, as provided in sub-section (6) of Section 30, if such a decision is taken by atleast half the members of the Committee and such Resolutions of the Committee will not be required to be placed before the Corporation. It can therefore be seen that the constitution of the Staff Selection and Appointment Committee was in conformity with the provisions of the said Act and there was a valid delegation of power by the Corporation in favour of such a Committee. In view of the provisions of sub-section (6) of Section 30 of the Act, and the Resolution dated 22.1.1999, the decision of the Committee as long as taken by the majority of the members would be final and would not be required to be confirmed by the Corporation.

12.4 Learned Counsel for the petitioner has however, submitted that even if the Staff Selection and Appointment Committee is validly constituted, the recommendations could not have been made by the Departmental Promotion Committee, since no such Committee is envisaged under the Act and in fact the Staff Selection and Appointment Committee would be governed by the recommendations of the Committee specified under Section 54 of the said Act. This contention of the Counsel for the petitioner would require interpretation of some of the provisions of the said Act, which may be noted at this stage.

12.5 Section 40 of the said Act provides for appointment of Transport Manager. Sub-section (1) of Section 40 provides that in the event of Corporation

acquiring or establishing a transport undertaking, the Corporation shall, subject to the approval of the State Government, appoint a fit person to be the Transport Manager of the transport undertaking.

12.6 Section 45 of the said Act provides for appointment of City Engineer etc. Sub-section (1) of Section 45 provides for the appointment of persons to the post of City Engineer. Medical Officer of Health, Municipal Chief Auditor and Municipal Secretary. Sub-section (2) of Section 45 provides that the Corporation may, with approval of the State Government, create appointment of Deputy Municipal Commissioner or an appointment of Assistant Municipal Commissioner and may appoint fit person to such appointments. Sub-section (2) of Section 45 reads as follows:-

"Sec.45 Appointment of City Engineer -

(1) xxxx

(2) The Corporation may from time to time
with the approval of the State Government
create an appointment of Deputy Municipal
Commissioner or an appointment of
Assistant Municipal Commissioner or so
many such appointments as it considers
necessary, and may appoint a fit person
or fit persons to such appointments."

12.7 Section 51 of the said Act deals with the Number, designations, grades etc. of other Municipal officers and servants. Section 52 of the said Act provides that no permanent officer or servant shall be entertained in any department of the Municipal administration unless he has been appointed under Section 40 or 45, or his office and emoluments are covered by sub-section (1) of Section 51 or are included in the statement sanctioned under sub-section (3) of Section 51 and for the time being in force.

12.8 Section 53 of the said Act deals with the power of appointment to different posts. Section 53 of the said Act reads as follows:-

"53. Power of appointment in whom to vest.

(1) The power of appointing municipal
officers, whether temporary or permanent,
whose minimum monthly salary exclusive of
allowances exceeds such amount as may be
fixed in this behalf by the State
Government, by a general or special order

from time to time in the case of each Corporation shall vest in the Corporation.

Provided that temporary appointments for loan works carrying a minimum monthly salary, exclusive of allowances of the amount as so fixed by the State Government may be made for a period of not more than six months by the Commissioner with the previous sanction of the Standing Committee on condition that every such appointment shall forthwith be reported by the Commissioner to the Corporation and no such appointment shall be renewed on the expiry of the said period of six months without the previous sanction of the Corporation.

(2) Save as otherwise provided in sub-section

(1), the power of appointing municipal officers and servants, whether temporary or permanent, under the immediate control of the Municipal Chief Auditor and the Municipal Secretary shall vest in the Municipal Chief Auditor or the Municipal Secretary, as the case may be, subject, in either case, to the approval of the Standing Committee unless the said Committee in any particular case or class of cases dispenses with his requirement.

(3) Save as otherwise provided in this Act,

the power of appointing municipal officers and servants whether permanent or temporary vests in the Commissioner:

Provided that such power in respect of permanent appointments shall be subject to the statement for the time being in force prepared and sanctioned under Section 51.

Provided further that no temporary appointment shall be made by the Commissioner for any period exceeding six months and no such appointment carrying a monthly salary exceeding such amount as may be fixed in this behalf, by a general or special order, from time to time by the State Government in the case of each Corporation shall be renewed by the Commissioner on the expiry of the said period of six months without the previous sanction of the Standing Committee."

manner of making appointments. Sub-sections (1) and (2) and (3) of Section 54, which are relevant for our consideration, read as follows:-

"54. Manner of making appointments -

- (1) There shall be a Staff Selection Committee consisting of the Commissioner or any other officer designated by him in this behalf, the Municipal Chief Auditor, the Head of the Department concerned and not more than one other officer nominated by the Commissioner;
- (2) The Staff Selection Committee shall, in the manner prescribed in the rules, select candidates for all appointments in the municipal service other than appointments referred to the sub-section (1) of section 53 and other than those which the Corporation may, with the previous approval of the State Government, by order specify in this behalf, unless it is proposed to fill the appointment from amongst persons already in municipal service or unless the appointment is of temporary character and is not likely to last for more than six months.
- (3) Every authority competent to make appointments in the municipal service shall make appointments of the candidates so selected in accordance with the directions given by the Staff Selection Committee."

12.10 From the above provisions of the said Act, it can be seen that Sections 40 and 45 of the said Act primarily deal with creation of different posts. In particular, sub-section (2) of Section 45 empowers the Corporation to create the post of Deputy Municipal Commissioner or Assistant Municipal Commissioner with the approval of the State Government. Section 53 of the said Act on the other hand provides for the authorities in whom power for appointment to such posts vest. By virtue of sub-section (1) of Section 53, the Corporation enjoys the power of appointing Municipal Officers, whose minimum monthly salary exclusive of allowances exceeds such amount as may be fixed by the State Government in this behalf. Sub-section (2) of Section 53 provides for the power of

appointing Municipal Officers and servants under the immediate control of the Municipal Chief Auditor and the Municipal Secretary. Save as otherwise provided in sub-section (1) the power vests in the Municipal Chief Auditor or the Municipal Secretary, as the case may be, subject to the approval of the Standing Committee, unless such a requirement has been dispensed with. Sub-section (3) of Section 53 provides that save as otherwise provided in the Act, the power of appointing municipal officers and servants shall vest in the Commissioner.

12.11 Thus, under Section 53 of the said Act, the legislature has created three hierarchial levels for vesting of the power for making appointments to the different posts in the Corporation. Under sub-section (1) the power for making appointments to all posts carrying pay-scale in excess of certain specified amount vests in the Corporation. For such of the posts which are not covered by sub-section (1) of Section 53, but are under the immediate control of Municipal Chief Auditor or the Municipal Secretary; powers to make appointments to such posts vest in the Municipal Chief Auditor or the Municipal Secretary; as the case may be. Under sub-section (3) of Section 53, power vests in the Commissioner to make appointments to all residuary posts save as otherwise provided in the Act.

12.12 Sub-section (1) of Section 54 as noted above provides for creation of Staff Selection Committee consisting of Commissioner, or any officer designated by him and the Municipal Chief Auditor as well as the Head of the Department concerned and not more than one other officer to be nominated by the Commissioner.

12.13 Under sub-section (2) of Section 54, such a Staff Selection Committee has to select candidates for all appointments in the Municipal service, other than appointments referred to in sub-section (1) of Section 53 and other than those which the Corporation with the previous approval of the State Government by order specify in this behalf, unless it is proposed to fill the appointment from amongst persons already in Municipal service or unless the appointment is of temporary character not likely to last for more than six months. It can thus be seen that Staff Selection Committee as provided under sub-section (1) of Section 54 has to select candidates for all appointments subject to two exceptions, namely (1) those appointments referred to in sub-section (1) of Section 53 and (2) such of the appointments which the Corporation may with the previous approval of the Government specify in this behalf. Here

again, if the appointments so specified are proposed to be filled from amongst the persons already in Municipal service or are of temporary character not likely to last for more than six months, the Staff Selection Committee shall have the powers to select candidates for such appointments.

12.14 The learned Senior Counsel Shri S.N. Shelat has made available a Notification issued by the State Government and published in the official gazette dated May 1, 2000, in which the posts to be specified under sub-section (1) of Section 53 are those whose pay-scale exceeds Rs. 8,000/-. It is not in dispute that the post of Deputy Municipal Commissioner carries the pay-scale exceeding the amount specified in the Notification. It can therefore be seen that the appointment of the Deputy Municipal Commissioner is covered under sub-section (1) of Section 53 of the Act, since the post carries salary in excess of the amount fixed by the Government by the Resolution. In view of the fact that the appointment to the post of Deputy Municipal Commissioner is not to be made under sub-section (1) of Section 53, Staff Selection Committee constituted under sub-section (1) of Section 54 would not have the power to make selection of the candidates to the said post by virtue of the provisions of sub-section (2) of Section 54, which excludes all posts appointment of whom are referred to in sub-section (1) of Section 53 from the purview of the powers of the Staff Selection Committee. I am unable to accept the contention of the learned Counsel for the petitioner that the words "unless it is proposed to fill the appointment from amongst persons already in Municipal service" appearing in sub-section (2) of Section 54 should be read also with the earlier portion of sub-section, namely "other than appointments referred to under sub-section (1) of Section 53". The said exception clause is to be read with the latter portion of the said sub-section, namely with the words "and other than those which the Corporation may, with the previous approval of the State Government, by order specify in this behalf." Apart from plain grammatical meaning of the language of sub-section (2) of Section 54, there is yet another indication in the Section itself which would make the intention of the legislature further clear. Under sub-section (1) of Section 54 of the Act, the Staff Selection Committee consists of besides others the Head of the Department concerned. In case such a Staff Selection Committee has to select the candidates for the post of Deputy Municipal Commissioner, the words "Head of the Department concerned" would not be possible to reconcile and would be left redundant. It is also not possible to envisage

that the legislature intended that some of the members of the Staff Selection Committee would be officers of the Corporation lower in rank than the posts for which the selection is to be made by the Committee. Thus, seen it would become abundantly clear that the post of the Deputy Municipal Commissioner would not be within the purview of the Staff Selection Committee constituted under sub-section (1) of Section 54 of the Act.

12.15 It is true that the formation of the Departmental Promotion Committee is not specified in any of the provisions of the Act or the Rules. This by itself would not render the procedure adopted by the Staff Selection and Appointment Committee illegal. The Departmental Promotion Committee was constituted through executive instructions and since the same was not opposed to any of the provisions of law, the procedure adopted by the Committee cannot be held to be illegal. The role of the Departmental Promotion Committee was only to scan the applications received and place its recommendations before the Committee, which in the present case was done as is apparent from the affidavits filed by the respondent No.1. The Staff Selection and Appointment Committee having taken into consideration the recommendations of the Departmental Promotion Committee and having examined the question of qualifications of the petitioner, the fact that the applications were earlier processed by the Departmental Promotion Committee cannot be a ground to challenge the procedure adopted by the Staff Selection and Appointment Committee.

13. In view of my above conclusion, and in view of the conclusion that the Corporation had validly delegated its powers to the Staff Selection and Appointment Committee, I find that the constitution of the Committee did not suffer from any illegality or irregularity.

14. Rule 1 of Chapter III of Appendix IV provides that except in case of temporary appointments under sub-section (7) of Section 45 and in case of acting appointments under Section 58, no person shall be appointed to any of the posts, the power of appointment to which vests in the Corporation, unless he possesses the qualification prescribed under Rule 3.

14.1 Under Chapter III of Appendix IV, the method of appointment of certain Municipal Officers and servants is specified under Rule 2, which reads as follows:-

"2. Before making an appointment to any post referred to in rule 1 applications shall be

invited for such post by advertisement in the local newspapers and the applications received shall be scrutinised by the Commissioner who shall submit to the Corporation, through a committee if so required by the Corporation, a list arranged in order of preference of such persons out of those who have applied as he considers qualified for the post:

Provided that, if the Corporation is of the opinion that any officer in municipal service possessing the qualifications prescribed under rule 3 is a fit person to be appointed to the post, it may appoint such officer to the post without following the procedure prescribed in this rule."

Rule 3 of Chapter III empowers the Corporation to prescribe the qualifications as required for each post with the approval of the Government, the power of appointment to which vests in the Corporation.

14.2 From Rule 2 of Chapter III, it can be seen that for making appointment to the posts referred to in Rule 1, applications are required to be invited by advertisement in local Newspapers and the application so received are required to be scrutinised by the Commissioner, who in turn has to submit the same to the Corporation, through a Committee, if so required. Under the proviso to the said rule, it is stated that if the Corporation is of the opinion that any officer in the Municipal service possessing the qualifications prescribed is fit for being appointed to the post, it may appoint such officer without following the procedure prescribed in the said Rule.

14.3 It can thus be seen that though ordinarily the appointment to the posts specified in Rule 1 are to be made by direct recruitment, under certain circumstances if the Corporation is of the opinion that any officer of the Corporation possesses the necessary qualifications for the posts in question and is fit to be appointed, the procedures of direct recruitment need not be followed.

14.4 In the present case, it is the case of the respondent that the procedure as laid down in the proviso to Rule 2 was followed and since the Corporation found that officer of the Corporation possessing the minimum qualifications prescribed for the post of Deputy Municipal Commissioner was available and was also found fit, he was appointed to the said post.

14.5 In the present case respondent No.1 was neither resorting to direct recruitment, nor in the strict sense of the term resorting to appointment by way of promotion and it is the curious hybrid of both when the field of competition is confined to only the officers who are already in service of the Corporation, but the selection out of these officers was not to be made by way of promotion, but by way of selection as in the case of direct recruitment. In view of the above rule, position in so far as the procedure that the respondent No.1 followed in making the appointment of the respondent No.3 to the post in question is concerned, I do not find any legal impediment. Nor do I find that the respondents No.1 and 2 committed any irregularity, inconsistency or infirmity in following the provisions of the Act and the Rules made thereunder.

15. This brings me to the question regarding the qualifications of the petitioner and his categorisation as ineligible for being considered to the post in question by the Staff Selection and Appointment Committee.

16. As noted earlier, it is not in dispute that the petitioner possesses a degree in Arts and also a degree in Law. It is also not in dispute that the petitioner does not pass B.A with Second Class, nor does he possess Second Class in LL.B (General) degree. It is equally undisputed that the petitioner secured Second Class in LL.B (Special) Examination. The question is whether the respondent No.1, acting through its Committee was justified in holding the petitioner ineligible for the post in question. In other words, was the decision of the respondent No.1 to disqualify the petitioner for being considered to the post in question on the ground that he did not possess the necessary educational qualifications correct?

16.1 As noted earlier, the Recruitment Rule requires that the candidate must possess a Second Class degree in Arts, Science, Commerce or Law. The respondents have stated that the Departmental Promotion Committee considered the qualifications of the petitioner, but was of the opinion that he did not possess the eligibility qualification. The decision of the Departmental Promotion Committee was also placed before the Staff Selection and Appointment Committee, which in turn concurred with the decision of the Departmental Promotion Committee. In the affidavit it is elaborated that the petitioner did not have Second Class in LL.B (General)

and subsequent passing of degree in Special Law with Second Class would not make the petitioner eligible for the post in question. It is stated that the degree in Special Law is a requirement for joining the professional course, without which a person cannot enrol to the State Bar Council and would not be entitled to practice law. It is further stated that however, a student desiring to undertake Post-graduate study in law would be free to pursue the course with only the degree in General Law without a degree in Special Law. It is stated that formerly there was no degree in Special Law and the Bar Council was holding the examination for those students who wanted to practice law and only those persons who obtained degree in Law by passing Bar Council's Examination could enter the legal profession. It is submitted that subsequently, the University was required to hold Special Course for students who have passed LL.B Examination and this Course was styled as Special Law Course. It is stated that for the purpose of employment, what is required is the degree of Bachelor of Laws i.e. General law and the Special law degree is not required. On the basis of this consideration, the Departmental Promotion Committee as well as the Staff Selection and Appointment Committee found that the petitioner was not eligible for the post in question since he did not fulfil the minimum educational requirement of having a degree in Arts, Science, Commercial or Law with Second Class.

16.2 If the expert body such as the Staff Selection Appointment Committee which has to make selection and appointments to the post in question has come to the conclusion that a certain degree would not fulfil the requirement under the statutory provisions of law and such conclusions is backed by sound reasoning, it would not be possible for this Court to over-rule such a conclusion by substituting its own view. As noted earlier, the Recruitment Rules required that the candidate must possess a Second Class degree in Arts, Science, Commerce or Law. The Rules did not specify whether a candidate who subsequently passes and obtains a Degree in Law (Special) with Second Class would be considered eligible or not. Thus, there was some scope for play in the Rules with respect to this specific requirement. If the Rules leave some discretion where the Committee can deliberate and come to a proper conclusion considering the nature of the post and the duties holder of such a post would be required to perform with respect to the fulfilment of the qualifications, the deliberations and conclusions of the Committee in this regard cannot be interfered with by the Court, unless such conclusions are shown to be arbitrary and wholly

unreasonable.

16.3 In the decision of the Hon'ble Supreme Court in Union of India Vs. Amrik Singh, reported in AIR 1994 SC 2316, the Hon'ble apex Court had observed that the prescription by instructions issued by the Comptroller and Auditor General which was not in consistent with the provisions of the Rule with respect to the eligibility criteria would not be void and the C.A.G would be competent to issue such instructions.

16.4 In the decision of the Hon'ble Supreme Court in the case of Madan Lal and ors. Vs. State of J & K and ors. reported in (1995) 3 SCC 486, the Hon'ble apex Court was pleased to observe that the assessment on merits made by an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body, and the Court is certainly not acting as a Court of appeal over the assessment made by such an expert committee. Though these observations were made in light of the challenge to the marks assigned by the Committee in a viva voce test, the observations would apply in facts of the present case also.

16.5 In yet another decision the Hon'ble Supreme Court in the case of National Institute of Mental Health & Neuro Sciences VS. Dr. Kalyana Raman, reported in AIR 1992 SC 1806, observed that the function of the Selection Committee is administrative in nature and not judicial or adjudicatory.

16.6 In the case of Indian Railway Construction Co.Ltd. Vs. Ajay Kumar, reported in AIR 2003 SC 1843, while considering the scope of judicial review of administrative action, the Hon'ble Supreme Court observed that interference by the Court would be justified when manifest error in exercise of power or its existence in manifestly arbitrary manner by the concerned authority is noticed, or when the decision suffers from illegality, irrationality or procedural impropriety.

16.7 In the case of State of U.P and anr. Vs. Johri Mal reported in 2004 AIR SCW 3888, once again considering the scope of judicial review of administrative action, the Hon'ble Supreme Court made following observations:-

"28. The scope and extent of power of the
judicial review of the High Court contained in
Article 226 of the Constitution of India would
vary from case to case, the nature of the order,

the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the Courts step into the areas exclusively reserved by the supreme lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review Court. The limited scope of judicial review succinctly put are:

- (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies;
- (ii) A petition for a judicial review would lie only on certain well-defined grounds;
- (iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.
- (iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasions miscarriage of justice.
- (v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgement of the legislative bodies."

In view of the above judicial pronouncements, it can be seen that the Court would have the power to

interfere with the action of the Committee, if it is found that the Committee has acted arbitrarily, illegally or in disregard to the statutory provisions.

17. As noted above, I find that the Committee, after due deliberations had come to the conclusion that the petitioner did not possess necessary qualification. The decision of the Committee cannot be termed as arbitrary or unreasonable. It would not be possible for this Court to substitute its view for that of the Committee and over-rule its conclusions. In that view of the matter, I find that the Committee did not commit any illegality in coming to the conclusion that the petitioner did not fulfil the necessary qualifications for being appointed to the post in question.

18. In view of the fact that I find that the procedure adopted by the Committee for appointment of the respondent No.3 to the post in question did not suffer from any material irregularity or infirmity and in view of the fact that I find that the Committee was justified in holding that the petitioner does not possess necessary educational qualifications required for the post in question, it is neither possible, nor necessary for me to go in to the last question, namely that of the qualifications of the respondent No.3 to be appointed to the said post in question. This not being a Public Interest Litigation, and since I find that the petitioner was not qualified to vie the post in question, his challenge to the appointment of the respondent No.3 in isolation cannot be examined any further.

19. In this view of the matter, I find that the petitioner has not made out any case for interference and the petition is therefore, required to be rejected.

20. In the result, petition fails and is rejected. Rule is discharged with no order as to costs. Interim relief granted earlier is vacated. However, at the request of learned Counsel for the petitioner, this order shall remain stayed for a period of 3 weeks from today.

(Akil Kureshi, J.)

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